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* **IN THE HIGH COURT OF DELHI**

\+ CM (M) No.68 of 2000 & CM No.777 of 2002

% Date of decision: 12.07.2006

SUKHBIR SINGH & ANR. ...PETITIONERS

Through: Ms. Suman Kapoor, Advocate.

VERSUS

DAYA SHANKAR & ORS. ...RESPONDENTS

Through: Mr. Pawan Kumar, Advocate for Respondent No.1.

CORAM:
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to Reporter or not?

3. Whether the judgment should be reported in the Digest?

SANJAY KISHAN KAUL, J. (Oral)

1. The father of the respondents late Shri Bharat Singh was the owner of property bearing No.2473, Gali No.9, Beadon Pura, Karol Bagh, New Delhi, which devolved on the respondent No.1. The premises were let out to late Shri Sant Singh consisting of one room, latrine and bath on the ground floor. On the demise of Shri Sant Singh, the petitioners and respondents 2 to 7 being his legal heirs claimed to have become the tenants.

2. The dispute between the landlord and tenant has a chequered history. Late

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Shri Bharat Singh is stated to have terminated the tenancy in the year 1972 and since the premises fell in the slum area, petition was filed before the Competent Authority (Slum) for permission to file eviction petition. The tenant Shri Sant Singh passed away during the pendency of this petition and late Shri Bharat Singh filed a civil suit for possession against his legal heirs in the year 1973. Shri Bharat Singh passed away in the year 1975. In 1976, the question of inheritance of tenancy in a residential premises was decided by the Apex Court and in view of the changed legal position, the suit for possession was withdrawn.

3. The respondent No.1 having become owner of the tenanted premises in pursuance to the Will of late Shri Bharat Singh filed a fresh petition before the Competent Authority (Slum) and the permission was granted in December 1978. The respondent No.1 filed two eviction petitions. The first petition was under Section 14(1)(e) of the Delhi Rent Control Act, 1958 (hereinafter referred to as the said Act) for *bonafide* requirement of the premises while the other petition was filed on various grounds under Section 14(1)(a), (b), (c), (d), (h) & (j) of the said Act. The eviction petition under Section 14(1)(e) of the said Act was dismissed by the Additional Rent Controller on 22.1.1987 on account of the conclusion reached that the premises were not required by the respondents *bonafide* considering the size of his family and the purpose of letting was also not residential. The eviction petition filed on the other ground

was, however, allowed on some grounds by the Additional Rent Controller on 20.1.1997. The petitioners and respondent No.1 aggrieved by the same on different accounts filed appeals before the Rent Control Tribunal and the appeals were disposed of by the impugned order dated 18.11.1999. It is this order, which is sought to be challenged in the present proceedings under Article 227 of the Constitution of India.

4. It is trite to say that the jurisdiction of this Court under Article 227 of the Constitution of India is not appellate in nature and unless there is a patent error or improper exercise of jurisdiction, this Court is not to reappraise the evidence in the present proceedings. It is also relevant to note that originally in the said Act a provision had been made for the second appeal to this Court but the legislature in its wisdom subsequently deleted the same. The intent of the legislature is thus clear that there should be no second appeal in such matters.

5. There were cross-appeals filed before the Rent Control Tribunal on account of the conclusion arrived at by the Additional Rent Controller in terms of its judgement dated 20.1.1997. The reason for the same was that all the grounds of the respondents were not accepted. The petition under Section 14(1)(a), (b), (c), (d) & (h) of the said Act did not succeed but the petition was allowed under Section 14(1)(j) of the said Act and it was held that the petitioners/tenants had caused substantial damage to the tenanted premises.

The petitioners were also held liable for the sum of Rs.10,000/- as compensation, which they were required to pay failing which eviction order would follow.

6. One of the major issues considered by the Appellate Court relates to the devolution of the tenancy and as to whether such tenancy was inherited by all the legal heirs of Shri Sant Singh or only by his wife Shrimati Kailash Kaur. The notice of termination of tenancy on Shri Sant Singh in the year 1972 was not in dispute and also found adjudication in the judgement dated 22.1.1987 passed earlier by the Additional Rent Controller. The Appellate Tribunal, thus, came to the conclusion that the tenancy devolves only on his widow Shrimati Kailash Kaur. This is a pure finding of fact and the reasoning given by the Appellate Court cannot be faulted in this behalf.

7. The second question considered is as to whether there were arrears of rent outstanding against the tenant. It was held that since the tenancy devolves only on Shrimati Kailash Kaur on the service of notice upon her in 1976 for arrears, the tenant was obliged to clear the same. The sequitor to this was the issue whether there had been compliance of the payment of rent in pursuance to the notice. Findings arrived by the Courts below is that the notice dated 7.7.1972 was not complied with at all whereas the deposits made in Court in pursuance to the notice issued in the year 1976 were invalid and illegal. The Appellate Tribunal, thus, rightly came to the conclusion that the petition under

Section 14(1)(a) of the said Act for non-payment of rent was liable to be allowed.

8. The principal contention is in relation to the purpose of letting and this is also the aspect emphasised by the learned counsel for the petitioners. The tenancy was created in pursuance to a written Rent Deed dated 6.5.1952 (exhibit P-3), which clearly spell out the purpose of letting as residential. It is in view of this that the Appellate Tribunal came to the conclusion that once such a written document has been proved and is available on record the provisions of Section 92 of the Evidence Act would come into play and the oral testimony would not be admissible. In my considered view, this is a right approach adopted by the Tribunal.

9. Shrimati Kailash Kaur passed away long time back and after her demise it is her sons, who have been utilising the premises and using it for business purpose contrary to the purpose of letting.

10. The Appellate Tribunal allowed the appeal under Section 14(1)(a)(b) & (c) of the said Act and the respondents were directed to pay the arrears of rent within one month from the date of the order. However, in view of the respondents succeeding in respect of the ground under Section 14(1)(c) of the said Act one month's time was granted to stop mis-user.

11. The respondents also filed CM No.777/2002 to bring on record subsequent additional facts including an application filed by the petitioners and

respondents 2 to 7 dated 19.1.1976 in the earlier suit filed in the year 1973 admitting the purpose of letting as residential one. The suit was disposed of on the ground of compromise that since the letting purposes was accepted to be residential the suit for possession has become infructuous. Even at the stage of grant of permission by the Competent Authority (Slum), the purpose was found to be residential. The order was sought to be impugned in the writ petition but to no avail. It has been, thus, stated that if at all the issue of purpose of letting is to be treated as *res judicata* it became so at that stage and subsequently what the Additional Rent Controller held on 22.1.1987 cannot be relied up. This was without prejudice to the contention of the learned counsel for the respondent No.1 that the finding arrived at by the Additional Rent Controller on 22.1.1987 was based on the evidence produced on record only in that case. The purpose of grant of perpetual lease dated 17.8.1963 is also stated to show that the user was residential which lease has been placed on record.

12.A perusal of the order dated 22.1.1987 shows that the Rent Deed was produced even in the said proceedings but oral testimony was relied upon to come to the conclusion that even though the Rent Agreement states the purpose of letting as residential, the counterfoils of the rent receipts show the purpose as commercial, the oral testimony shows that the premises was being used for commercial purposes. It was, thus, observed that though the oral

testimony contrary to the written document may not be acceptable the parties can change the purpose of letting. However, insofar as the notices for mis-user are concerned, one of the notices was not tendered in evidence or proved.

13. In my considered view, there is weight in the submission of the learned counsel for the respondent No.1 that the issue of purpose of letting cannot be said to be fore-closed by the judgement dated 22.1.1987 of the Additional Rent Controller. There are undisputed findings by the Competent Authority (Slum) as affirmed by the High Court in respect of the purpose of letting being residential. This was prior to the order dated 22.1.1987. Further, there were separate petitions proceedings under different grounds of eviction. The fact that the respondents failed to succeed on grounds of *bonafide* requirement and gave the same up cannot imply that the finding arrived therein in respect of the purpose of letting would be final and binding or that it was not open to the Additional Rent Controller or the Tribunal in the separate eviction petition to come to a different conclusion based on the evidence before it. In my considered view, the Tribunal has rightly come to the conclusion that when there is a written contract where the purpose of letting is set out as residential coupled with the factum of the rent receipts the purpose of letting is residential. Oral testimony to show that the tenant was using the premises for commercial purposes cannot imply the consent of the landlord. The landlord was protesting and merely because a tenant uses it for a contrary purpose

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cannot be a ground to presume such consent.

14.The tenant enjoyed the benefit during his lifetime and his wife also enjoyed the benefit after the demise of the original tenant. The remaining legal representatives of the deceased tenant, who are financially independent in their own right cannot continue to enjoy the tenancy on the ground that they have inherited the same when the purpose of letting is residential.

15.In view of the aforesaid, I do not find any patent error or erroneous exercise of jurisdiction by the Appellate Tribunal calling for any interference of this Court.

16.In the end it may be observed that though the arguments were concluded yesterday and this Court was in the course of dictating the judgement dismissing the petition learned counsel for the petitioner sought time to obtain instructions whether the petitioner was willing to vacate the premises subject to grant of some time. In view thereof, formal order of dismissal of the petition was deferred till today. Learned counsel for the petitioner today states that the petitioners are not willing to vacate the property and would opt to agitate the issue further by recourse to legal remedy as may be available to the petitioners.

17.Dismissed.

July 12, 2006
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SANJAY KISHAN KAUL, J.

Fresh RP 3782/06